

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI**

In re:	)	
	)	
<b>Name of Debtor(s),</b>	)	Case No.
Movant/Debtor,	)	
	)	Chapter ____
vs.	)	
	)	
<b>Name of Creditor,</b>	)	EXAMPLE – (sample dollar values
Serve:	)	shown to illustrate partial lien avoidance
<b>Name of Person to be Served</b>	)	calculation)
	)	
Respondent/Creditor.	)	

**NOTICE AND MOTION TO AVOID JUDICIAL LIEN OF [NAME OF CREDITOR]**

**PLEASE TAKE NOTICE: ANY RESPONSIVE PLEADING IN OPPOSITION TO THIS MOTION MUST BE FILED IN WRITING NO LATER THAN TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THIS MOTION AS SHOWN ON THE CERTIFICATE OF SERVICE. THE RESPONSE MUST BE IMMEDIATELY SERVED UPON THE UNDERSIGNED AND UPON ALL CREDITORS AND PARTIES IN INTEREST WHO WERE SERVED WITH THIS MOTION PURSUANT TO L.B.R. 9013-1A. THE COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE TO ANY PARTY UPON EXPIRATION OF THE RESPONSE PERIOD IF NO RESPONSE IS FILED.**

**IF A RESPONSE IS FILED, THE MOVANT SHALL SET THE MATTER FOR HEARING AND PROVIDE NOT LESS THAN TEN (10) DAYS WRITTEN NOTICE THEREOF TO THE RESPONDENT AND TO ALL CREDITORS AND PARTIES IN INTEREST SERVED WITH THE RESPONSE.**

1. Debtor [name of debtor] commenced this case on [date of petition] by filing a voluntary petition for relief under Chapter \_\_\_\_ of the United States Bankruptcy Code.
2. The Court has jurisdiction pursuant to 28 U.S.C. Sec. 1334 to avoid and cancel the judicial lien held by [name of creditor] on real property of the Debtor pursuant to 11 U.S.C. Sec. 522(f).
3. On or about [date], [name of creditor] obtained a judgment against the Debtor and obtained a lien against the Debtor's real property located at [address of property]. The judgment is entered of record in [style of case, case number], in [court name, division and location]. The amount of the judgment is \$ [dollar amount] plus court costs and attorneys' fees, which constitutes the amount of the lien.

4. The fair market value of the real estate owned by Debtor and subject to the judicial lien is \$ [dollar amount].
5. The Debtor claims an exemption in the property referred to in the preceding paragraph in the amount of \$ [dollar amount].
6. At the time Debtor filed this bankruptcy petition, this real estate was subject to consensual mortgage lien(s) and other liens in the amount of \$ [dollar amount].
7. At the time Debtor filed this bankruptcy petition, the Creditor's judicial lien secured an indebtedness in the amount of \$ [dollar amount].
8. The existence of the [name of creditor]'s lien on Debtor's real estate impairs exemptions to which the Debtor would be entitled under 11 U.S.C. Sec. 522(b). The applicable formula as set forth in *Kolich v. Antioch Laurel Veterinary Hospital Inc. (In re Kolich)*, 273 B.R. 199 (B.A.P. 8th Cir. 2002) *aff'd* 328 F.3d 406 (8<sup>th</sup> Cir. 2003) is:

<i>Creditor's Judicial Lien</i>	<u>[\$14,822.85]</u>
<i>Plus all other liens</i>	<u>[\$140,000.00]</u>
<i>Plus exemptions</i>	<u>[\$15,000.00]</u>
<i>Total</i>	<u>[\$169,822.85]</u>
<i>Minus value of land interest absent liens</i>	<u>[\$165,000.00]</u>
<i>Extent of Impairment</i>	<u>[\$4,822.85]</u>

9. The extent of impairment exceeds the amount of the Creditor's judicial lien so that the entire judicial lien should be avoided. **/OR/** The lien impairs Debtor's exemption to the extent of \$ [dollar amount], and the lien should be avoided to the extent of the impairment.

WHEREFORE, Debtor prays for an order against [name of creditor] avoiding and canceling the judicial lien in the above-mentioned property to the extent of the lien impairs Debtor's exemptions, and for such additional or alternative relief as may be just and proper.

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Attorney Name, Fed. & State Bar #  
Attorney for Movant/Debtor  
Address  
City, State, Zip Code  
Phone:            Fax:  
e-mail

## CERTIFICATE OF SERVICE

The undersigned certifies that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the foregoing Notice and Motion to Avoid Lien was served by electronic notification or by placing a copy of the same in the United States Mail, postage prepaid, and addressed to those not electronically notified. Service List:

Trustee  
Address  
City, State, Zip Code

Creditor  
Respondent  
Address  
City, State, Zip Code

Respondent's Service Recipient  
Address  
City, State, Zip Code

Debtor  
Address  
City, State, Zip Code

Other Lien Holders  
Address  
City, State, Zip Code

Creditors Filing Proofs of Claim (Chapter 13 Cases - only)  
Address  
City, State, Zip Code

\_\_\_\_\_  
Printed name

03/07